IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. NO. 545 OF 1987

DATE OF DECISION: January 17, 2007

Parties Name

Jagat Ram

..APPELLANT

VERSUS

Mai Chand and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH

PRESENT: Mr. R.M. Suri,
Advocate, for the appellant.

Mr. S.P.Laler, Advocate, for
appellant in FAO No. 509 of 1987.

Mr. P.S.Saini, Advocate, for respondent No.2

Ms. Radhika Suri, Advocate, for respondent No. 3.

JASBIR SINGH, J. (oral)

Order.

This order will dispose of three appeals – FAO No. 545, 544 and 509, all of the year 1987, as these appeals arise out of a common judgment, passed by the Motor Accidents Claims Tribunal at Kurukshetra. For facility of dictating order, facts are being mentioned from FAO No. 545 of 1987, filed by Jagat Ram, owner of the offending vehicle.

It is not in dispute that on April 10, 1986, one Baldev, appellant in FAO No. 509 of 1987, and Mai Chand , respondent No. 1 in this appeal, suffered injuries in a motor accident, caused by respondent No. 2,

while driving truck bearing No. HRD 845.

At the time of arguments, no dispute has been raised regarding factum of accident and injuries, suffered by above said two persons therein. The Motor Accidents Claims Tribunal, Kurukshetra, vide award under challenge, has absolved the Insurance Company from payment of compensation on the ground that respondent No. 2, who was driving the offending vehicle, at the relevant time, was not holding a valid driving licence.

Shri Suri has raised arguments against above said finding, given by the Tribunal below. He contends that respondent No. 2 was working only as a cleaner on the truck, whereas one Shri Jaspal Singh was the Driver. Truck was parked and the Cleaner drove away the same , without any authority either from said Jaspal Singh, Driver of the truck, or the appellant, who was owner of the said vehicle.

After hearing counsel for the appellant, this Court feels that the argument raised is liable to be rejected. There exists virtually no evidence on record to show that Ram Pal was not a Driver and in fact Jaspal Singh was Driver of the offending truck. The injured witnesses have categorically stated that at the relevant time, respondent No. 2 was driving the truck and they had seen him, doing the same, for the last about six months, prior to the date of accident. Not only this, no evidence worth the name has been brought on record to show that Jaspal Singh was ever employed by the appellant as a Driver of the offending vehicle. The Tribunal, after analysing evidence on record in that regard, has observed thus:

"11.Matter can be looked from another angle also. First

respondent owner of the truck Jagat Parkash has appeared as RW1 and asserted that Jaspal Singh was employed as Driver on the truck whereas Ram Pal was only a cleaner having been employed five or seven days prior to the accident. As noticed herein before, Jaspal Singh appearing as RW2 has stated that he was employed as driver on 15.7.84, therefore, it is natural that owner of the truck must be keeping employees' register or at least must have been in possession of the receipts obtained from Jaspal Singh in token of his having received his salary month after month right from July, 1984. But strangely enough neither such register nor even one single receipt has been placed on record. Besides this log book must have also been kept on the truck wherein the driver must have made entries in usual course of business. That too is also not forth coming. It is also a matter of common knowledge that when the trucks pass through Sales Tax barriers or Octroi Post laiden with goods, relevant entries are made in the record kept there. Name of the driver is always mentioned therein. This record could be summoned from either of the said independent source but no effort whatsoever was made on behalf of the owner to call for the same and exhibit on record. It has come in the evidence that the owner had a shop in Anaj Mandi, Ladwa. He must be keeping regular accounts of his business, including that of the truck. In those account books he must have shown payment to the driver. But such account books which were definitely in

possession of the owner – respondent No. 1 are also not forth-coming.

12.Non-production of the above said record raises an irresistible presumption against the owner – respondent No. 1 to the effect that all such record would have not supported him had it been produced."

This Court feels that the conclusion arrived at by the Court below is perfectly justified and is in consonance with the evidence on record. Statement of the injured and the independent witness clearly proves that Ram Pal, respondent No. 2 was Driver of the offending vehicle and further that in view of lack of evidence, it cannot be believed that Jaspal Singh was employed by the appellant as a Driver.

In view of findings, given above, F.A.O. Nos. 544 and 545, both of the year 1987, are dismissed.

F.A.O. No. 509 of 1987 has been filed by Baldev, who was injured in the above said accident. After analysis of evidence on record, the Tribunal has observed thus re: injuries suffered by him:

"16. Combined reading of the statements of PW2 Baldev, Dr. N.K.Gandhi PW1 and MLR Ex. A1, I find that the age of Baldev claimant at the relevant date was 45 years. There was crush injury on his right leg in the lower part of it. It extended on the medial and lateral malloli. He also suffered an injury on the right hand side of his head in the pareital area four inches above the right ear and there was diffused swelling present at

that time. As a result of the leg injury there was shortening of right lower limb by one inch as there was mall union of both bones of the right leg. There was a disuse atrofy of right leg muscle alongwith limitation of movements of right foot toes and ankle.

17.This shortening of leg was permanent fracture and due to it Baldev had developed limping. He could not walk and work properly. With the administration of proper physiotherapy, he would however be able to bear weight. The permanent disability suffered by him was to the extent of 40%. This permanent disability can be reduced to five to ten percent with the passage of time provided he is subjected to physiotherapy. He remained admitted in LNJP Hospital for 3 ½ months,"

After noting above said injuries, caused to the appellant, the Tribunal has granted only an amount of Rs. 48,000/- towards compensation. Out of the said amount, Rs. 20,000/- was granted for permanent disability and disfigurement and loss of future enjoyment. This Court is of the view that the compensation granted is on the lower side. It is not in dispute that the appellant was only 45 years of age at the time of accident. He had suffered a crush injury, on his right leg and other serious injuries on his body. As per medical evidence on record, injuries caused to him had resulted in the shortening of right lower limb by 1". At that time, permanent disability was assessed at 40%. Ends of justice will be met if above said compensation is enhanced from Rs. 20,000/- to Rs. 50,000/-,

which makes an overall increase of compensation of Rs. 30,000/-, which the appellant shall get with interest at the rate of 8% per annum from the date of moving the application, for claiming compensation, till realization of the amount.

With above mentioned modification FAO No. 509 of 1987 stands disposed of.

January 17, 2007. (Jasbir Singh)
DKC Judge